

Joshua E. Abraham
BUTZEL LONG, P.C.
477 Madison Avenue, Suite 1230
New York, New York 10022
(212) 374-5370
abraham@butzel.com

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,

Plaintiff,

v.

BANCO GENERAL, S.A., and BG VALORES,
S.A., f/k/a WALL STREET SECURITIES, S.A.

Defendants.

Adv. Pro. No. 12-01048 (CGM)

**DEFENDANTS' REPLY IN FURTHER SUPPORT
OF THEIR MOTION TO DISMISS THE COMPLAINT**

Defendants Banco General, S.A., and BG Valores, S.A., f/k/a Wall Street Securities, S.A., (collectively, “Defendants”) respectfully submit this reply memorandum in further support of their motion to dismiss the complaint (ECF No. 72) of plaintiff Irving H. Picard, Trustee (the “Trustee”) for the Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

ARGUMENT IN REPLY

In their motion to dismiss, the Defendants argued, *inter alia*, that the Trustee’s claims were barred under the Section 546(e) “safe harbor.” On November 3, 2022, the Hon. Jed S. Rakoff entered an Opinion and Order denying interlocutory review of this Court’s prior decisions denying similar motions to dismiss based on the § 546(e) safe harbor defense. *See Picard v. Multi-Strategy Fund Ltd.*, No. 22-cv-06502, 2022 WL 16647767 (S.D.N.Y. Nov. 3, 2022). While the Defendants respectfully disagree with Judge Rakoff’s determination, the Defendants reserve their right to more fully assert this and other affirmative defenses at a later stage in the proceedings.

Indeed, the Trustee does not dispute that the Defendants are “net losers” in Fairfield Sentry, and there are no facts pleaded in the complaint suggesting that the Defendants had, or could have had any knowledge of the Ponzi scheme. Accordingly, in addition to demonstrating their entitlement to dismissal under § 546(e), the Defendants intend to demonstrate that they took transfers from Fairfield Sentry “for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer[s] avoided” within the meaning of 11 U.S.C. § 550(b)(1). *See Multi-Strategy Fund Ltd.* at n.6

(“This Court has previously interpreted the ‘for value’ language as meaning that the Trustee may not recover from good faith transferees the principal of their investments – as any transfers received up to the amount of an investor’s principal were in satisfaction of its value – although the Trustee may recover fictitious profits.”); *see also* *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-01789, 2021 WL 3477479, at *9 (Bankr. S.D.N.Y. Aug. 6, 2021) (to establish “value” the Code simply requires that a redemption is “sufficient to support a simple contract, analogous to the ‘value’ required under state law to achieve the status of a bona fide purchaser for value.”); *Picard v. ABN Amro Bank N.A.*, No. AP 08-01789, 2020 WL 1584491, at *9 (Bankr. S.D.N.Y. Mar. 31, 2020) (surrendering equity interests constitutes value for purposes of section 550(b)); *In re Bayou Group, LLC*, 439 B.R. 284, 309 (S.D.N.Y. 2010) (investors in Ponzi scheme “gave value in the form of their initial investments”).

Dated: New York, New York
February 17, 2023

BUTZEL LONG, P.C.

By: /s/ Joshua E. Abraham
Joshua E. Abraham
477 Madison Avenue, Suite 1230
New York, New York 10022
Telephone: (212) 347-5370
abraham@butzel.com

*Attorneys for Defendants Banco General,
S.A., and BG Valores, S.A., f/k/a Wall Street
Securities, S.A.*